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OFFICE OF PETITIONS

In re Application of :
Miller et al. :
Application Number: 10/565382 : DECISION ON PETITION
Filing Date: 01/20/2006 :
Attorney Docket Number: 60,469- :
253;OT-5210 LAB :

This is a decision on the petition filed on September 25, 2008, under 37 CFR 1.137(b),¹ to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on February 10, 2008, for failure to timely submit an appeal brief in response to the Notice of Patent Decision from Pre-Appeal Brief Review mailed on January 9, 2008, which set a one (1) month period for reply. On June 27, 2008, Notice of Abandonment was mailed. On July 7, 2008, a petition to withdraw the holding of abandonment was filed. On September 12, 2008, the petition was dismissed.

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

Petitioner has filed a Request for Continued Examination (RCE) and an amendment as the submission required under 37 CFR 1.114.

This application is being referred to Technology Center Art Unit 3654 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

A handwritten signature in black ink, appearing to read "D. Wood", is positioned above the typed name.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions